A

MAHFUZ OMAR

v.

INSPEKTOR MOHD ZAID MADZIZAT & ORS & ANOTHER CASE

B

HIGH COURT MALAYA, KUALA LUMPUR
PRASAD SANDOSHAM ABRAHAM J
[SUITS NO: 21NCVC-177-2011 & 21NCVC-178-2011]
2 JANUARY 2013

C

CRIMINAL PROCEDURE: *Arrest - Unlawful detention - Plaintiffs were Members of Parliament - Plaintiffs arrested before reaching venue where press conference was being held - Whether plaintiffs' arrest lawful - Whether plaintiffs' actions unlawful - Whether plaintiffs entitled to claim*
D *damages - Criminal Procedure Code, s. 105*

TORT: *Damages - False imprisonment - Plaintiffs were Members of Parliament - Plaintiffs arrested before reaching venue where press conference was being held - Whether plaintiffs' arrest under s. 105 Criminal Procedure Code lawful - Whether plaintiffs' actions unlawful -*
E *Whether plaintiffs' constitutional rights violated - Whether plaintiffs entitled to claim damages - Federal Constitution, art. 5(1)*

The plaintiffs in both these suits were Honourable Members of Parliament elected on the ticket of Parti Islam Se Malaysia
F ('PAS'). The facts of this case arose out of a protest wherein there was supposed to be a march to Istana Negara to present a Memorandum concerning the need for free and fair elections. On 9 July 2011, the plaintiffs alighted from a taxi and were heading towards Hotel Hilton ('the hotel') where a press conference was
G being held. The defendants had obtained an order ('the order') from the Magistrate's court to bar sixty people, including the plaintiffs, from being present in the designated areas. However, before the plaintiffs reached the hotel lobby, they were arrested by the first defendant. It was not in dispute that the area in
H which the plaintiffs were arrested was not covered by the order. Nevertheless, the defendants argued that the arrest was made according to s. 105 of the Criminal Procedure Code ('CPC'). The issue that arose for consideration was whether the basis of the plaintiffs' arrest under s. 105 CPC was lawful and if it was not,
I whether the defendants' acts constitute a tort of false imprisonment for which the plaintiffs were then entitled to claim for damages.

Held (ordering defendants to pay damages to plaintiffs):

(1) There was no evidence of a design by the plaintiffs to commit an offence and at the time of arrest, it could hardly be said that the plaintiffs' arrest would have prevented the march from taking place. The plaintiffs' intention to attend the press conference in the hotel lobby could not constitute a basis for arrest under s. 105 CPC and was not unlawful. Further, the fact that PAS supported the march did not *ipso facto* mean that the plaintiffs would have had a design to participate in the march. Hence, the plaintiffs' detention under s. 105 CPC was unlawful and an act of false imprisonment. (paras 9, 12 & 13)

(2) In assessment of damages, the court must take into consideration the conduct of the defendants in violating the constitutional rights of the plaintiffs, *ie*, art. 5(1) of the Federal Constitution. Further, the court also took into consideration, *inter alia*, that (i) there was no evidence of physical injury and mental suffering as the plaintiffs were released on the same day; and (ii) there would be an element of disgrace and humiliation attributed to the plaintiffs by virtue of the wrongful arrest. Thus, the court awarded compensatory damages to each of the plaintiffs in the sum of RM70,000 and RM15,000 costs each. (paras 14, 16 & 18)

Case(s) referred to:

Jagdish Chander Bhatia v. State 27th May 1983 ***(refd)***

Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Prahad Panda v. Province of Orissa AIR [37] [1950] Orissa ***(refd)***

Tan Kay Teck & Anor v. The Attorney-General [1957] 1 LNS 84 HC ***(foll)***

Legislation referred to:

Criminal Procedure Code, s. 105

Federal Constitution, art. 5(1)

Criminal Procedure Code [Ind], s. 151

For the plaintiff - Mohamad Faiz Fadzil (Zulhazmy Sharif & Surya Putra Taulan with him); M/s Faiz Fadzil & Co

For the defendant - Habibah Haron SFC (Kharul Nizam FC with him); AG's Chambers

Reported by Kumitha Abd Majid

JUDGMENT

Prasad Sandosham Abraham J:

[1] This judgment is written in respect of 21NCVC-177-2011 wherein the plaintiff was Mahfuz bin Omar (IC No: 570825-02-6067) and 21NCVC-178-2011 wherein the plaintiff was Salahuddin bin Ayub (IC No: 6111201-01-5333). Both these cases were heard together as they involved the same issues and facts and after completion of the trial in respect of the above the matter had been set down for delivery of judgment, and these are my grounds of judgment in respect of both cases.

[2] The plaintiffs are Honourable Members of Parliament elected on the ticket of Parti Islam Se Malaysia (PAS). The facts of this case arose out of a protest wherein there was supposed to be a march to Istana Negara to present a memorandum concerning the need for free and fair elections in our nation. This protest group collectively came under the umbrella of Bersih, which comprised of several non governmental bodies and political parties from the opposition including PAS. Eventually this march became the precursor to several subsequent gatherings styled Bersih 2.0 & 3.0 and so on.

[3] On 9 July 2011 at approx 11:50am the plaintiffs alighted from a taxi from PAS Headquarters in Jalan Raja Laut at KL Central and were heading towards Hilton Hotel KL where a press conference was being held. Before the plaintiffs reached the lobby of KL Hilton the plaintiffs were arrested by DW2 ie, Inspector Mohd Zaidi bin Madzizat. The plaintiffs were asked to follow DW2 and to wait while DW2 had a conversation with another police officer and later taken to the Jinjang Police Station. Along the way, DW2 informed the plaintiffs that they had been arrested and were confined in Jinjang Police Station until the plaintiffs were released at 9.30pm on the same day. It is also noted that the defendants had obtained an order from the Magistrate's Court barring sixty six people from being present at designated areas but it is not in dispute that the area where the plaintiffs were arrested was not covered by the order but the 66 names included the plaintiffs (See pp. 10-50 bundle B).

[4] The singular issue in this case is for the court to determine whether the basis of the arrest of the plaintiffs under s. 105 of the Criminal Procedure Code (Act 593) (CPC) was lawful, and if it was not, whether the acts of the defendant constitute a tort of false imprisonment for which the plaintiffs are then entitled to claim for damages. It is also not in dispute that the basis of the arrest of the plaintiffs was made according to s. 105 of the CPC. I set out s. 105 of the CPC in toto.

> **105. Arrest to prevent seizable offences**
>
> A police officer knowing of a design to commit any seizable offence may arrest without orders from a Magistrate and without a warrant the person so designing if it appears to the officer that the commission of the offence cannot otherwise be prevented.

[5] The main ingredients of s. 105 of the CPC are:

(i) The arresting officer (in this case DW2) knowing of a design to commit any sizeable offence and believes that the arrest of person/persons is necessary;

(ii) It appears to the said officer that the commission of the offence cannot otherwise prevent a commission of the offence;

(iii) His or her detention is necessary for the maintenance of public order.

[6] Let us examine the evidence in this case to see whether the ingredients of s. 105 have been fulfilled. I refer to the evidence of DW2 and I set out the relevant portions of the same in his examination-in-chief.

> Q12: Adakah kamu kenal Plaintif-Plaintif sebelum tangkapan dibuat?
>
> A: Saya kenal Plaintif-Plaintif kerana kedua-duanya adalah Ahli Parlimen dan Naib Presiden PAS. Plaintif-Plaintif adalah ahli politik yang dikenali ramai dan biasa keluar dalam media masa.
>
> Q13: Seterusnya apa yang berlaku?
>
> A: Seterusnya saya menangkap Plaintif-Plaintif kerana saya percaya Plaintif-Plaintif juga akan menyertai perhimpunan tanpa permit tersebut kerana Plaintif-Plaintif adalah penyokong Bersih 2.0 dan pada masa di tahan Plaintif-

Plaintif hendak pergi ke Hotel Hilton yang pada masa itu pemimpin tertinggi parti dan penganjur Bersih 2.0 telah pun berada di Hotel Hilton dan akan berarak dari Hotel ke KL Sentral dan berhimpun di KL Sentral. Hotel Hilton dan KL Sentral adalah bersebelahan sahaja dan sangat dekat. Oleh itu saya percaya Plaintiff-Plaintiff perlu ditangkap untuk mencegah Plaintif- Plaintif daripada menyertai perhimpunan tanpa permit yang merupakan suatu kesalahan di bawah undang-undang dan juga dari melanggar perintah tersebut akhirnya.

[7] I also refer to his evidence in cross-examination

Q14: Bagaimana kamu tahu Plaintif-Plaintif adalah penyokong Bersih 2.0.?

A: Saya tahu kerana berdasarkan Perintah Larangan yang dikeluarkan oleh Majistret bertarikh 6.7.2011 mendapati Plaintif- Plaintif adalah penyokong Bersih 2.0 dan mereka juga adalah Naib Presiden dalam parti PAS yang menyokong perhimpunan Bersih 2.0.

Q: En Zaidi, setuju dengan saya ketika kamu menangkap kedua-dua Plaintif ini perarakan daripada KL Hilton untuk ke KL Sentral untuk menyertai perhimpunan ini belum berlaku?

A: Setuju.

Q: Dan setuju dengan saya ketika kamu diberitahu oleh kedua dua Plaintif bahawa mereka akan ke Hotel Hilton untuk satu press conference selepas itu masih tidak ada pengetahuan, kamu tidak ada risikan, kamu tidak ada pengetahuan yang kedua dua Plaintif akan turut serta mengikuti perarakkan ke KL Sentral untuk menyertai perhimpunan itu. Setuju, dengan kata lain mereka boleh stay di sana ambil hotel tinggal atas atau mereka boleh balik, setuju?

A: Setuju.

Q: Setuju dengan saya mereka tidak memakai baju, mereka memakai baju kemeja biasa.

A: Setuju.

Q: Tidak ada logo, tidak ada topi tidak ada payung tidak ada apa-apa penandaan di badan mereka, sepanduk termasuk bahawa mereka adalah antara tiga gulungan ini, setuju? Perkasa, Bersih atau Adil, setuju? Tidak ada pada badan kedua-dua Plaintif ini menunjukkan apa-apa tanda mereka memakai baju Bersih, setuju masa tangkapan.

A: Semasa tangkapan logo-logo memang tak ada

Q: So setujulah rasanya

A: Setuju.

Q: Hotel Hilton juga adalah kawasan berasingan bukan kawasan yang diminta oleh arahan kamu mendapat arahan untuk … bersurai, KL Hilton juga bukan tempat yang kamu bertugas untuk menyuraikan orang, betul?

A: Betul.

Q: Jadi setuju dengan saya mereka sebagai rakyat Malaysia adalah bebas untuk daripada KL Sentral berjalan kaki berdua-duaan ke Hotel Hilton, setuju?

A: Untuk rakyat Malaysia yang lain mungkin saya setuju

Q: Baiklah, kalau saya kata rakyat Malaysia ini En Zaidi adalah mereka yang memegang Kad Pengenalan Negara Malaysia, setuju?

A: Setuju.

Q: Dan kedua-dua Plaintif ini adalah pemegang Kad Pengenalan Malaysia, setuju?

A: Setuju.

Q: Jadi setuju dengan saya barang siapa yang memegang Kad Pengenalan Negara Malaysia ini adalah punya hak yang sama disisi undang-undang di atas kebebasan diri, setuju

A: Setuju.

Q: Maknanya kedua-dua Plaintif ini adalah punyai hak kebebasan bergerak sama seperti rakyat Malaysia yang kamu kata ini lain, setuju?

A: Setuju tapi bukan pada hari tersebutlah.

Q: Macam mana

A: Setuju tapi bukan pada 9 Julai 2011

Q: Ialah kamu dah tangkap saya cerita sebelum tangkap masa dia beritahu, masa dia beritahu kamu dia hendak pergi KL Hilton dia punya haklah setuju?

A: Setuju.

A Q: Before arrest made bila dia bagi tahu kamu dia hendak pergi Hotel Hilton kedua-dua mereka punya hak yang sama di bawah perlembagaan untuk bergerak kemana-mana, betul?

A: Setuju.

B Q: Betul, after arrest of courselah. En Zaidi, setuju dengan saya bila mana kedua-dua Plaintif ini mengatakan kepada kamu mereka akan ke Hotel Hilton sebelum arrest ia menunjukkan bahawa mereka tidak terdiri daripada perkumpulan yang ingin menjalankan satu perhimpunan haram, setuju. Sebab perhimpunan haram mengikut keterangan kamu di Mahkamah dari Hotel Hilton akan bergerak turun ke KL Sentral.

C

A: Setuju.

D Q: Begini En Zaidi, kamu sampai KL daripada Jerantut pada empat haribulan tujuh, betul, lima haribulan tujuh briefing, enam hari bulan tujuh adalah satu Perintah yang kamu lihat betul?

A: Betul.

E Q: Perintah Mahkamah Majistret bertarikh 6 Julai, dua perintah, betul? Dalam perintah itu setuju dengan saya ada banyak nama dalam perintah itu dan nama kedua-dua Plaintif ada dalam Perintah tu, betul?

F A: Betul.

Q: Malahan kamu kenal kedua-dua Plaintif ini sebab mereka ini kamu kata masuk paper selalu, betul?

A: Setuju.

G Q: Jadi setuju dengan saya juga muka mereka, muka Plaintif ini dah memang ada dalam in printed in your mind, dah ada dalam fikiran awak.

A: Setuju.

H Q: So at the moment you see them ketika jam 12:20 kamu lihat mereka di KL Sentral tak ada cerita banyak tangkap.

A: Betul, tapi tangkap untuk pencegahan.

I

Court

Q: Tangkap apa?

A: Tangkap di bawah pencegahan di bawah 105 KPJ

And now I quote his evidence from his re-examination.

Q: Kenapa En Zaidi percaya yang mereka akan menyertai perhimpunan itu, walaupun tahu mereka hendak ke Hilton pada masa itu?

A: Sebab di Hilton kita memang dah dapat maklumat memang ada pemimpin-pemimpin tertinggi dan penganjur Bersih dah berada dan kita juga dapat maklumat bahawa perarakan bila-bila masa akan dilakukan.

Q: Daripada mana ke mana

A: Daripada Hilton ke KL Sentral

Q: Dan perarakan daripada Hilton ke KL Sentral adakah satu perhimpunan yang melibatkan lebih daripada lima orang?

A: Ya.

Q: Dan adakah perarakan itu adalah satu perhimpunan haram?

A: Perhimpunan haram

Q: En Zaidi soalan peguam tadi berkenaan dengan En Zaidi dah set in your mind dah pun ada gambaran bahawa kerana ada perintah Mahkamah dua itu yang ada nama Plaintif di dalam Perintah tersebut, oleh kerana ada nama Plaintif dalam Perintah tersebut maknanya bila nampak aje Plaintif ni terus En Zaidi tangkap dan En Zaidi kata "ya kerana berdasarkan perintah", soalan saya En Zaidi, sekiranya En Zaidi nampak Plaintif-Plaintif?

Counsel for Plaintiff

Sekiranya, tidak boleh digunakan Yang Arif

Court

You don't have to ask them I'll find out what it is. Are you objecting?

Counsel for Plaintiff

Yes.

Court

What is the reason?

Counsel for Plaintiff

Sekiranya … let we hear the question

Court

I would effort so. Let her finish, kalau you nak object, objectlah. Carry on

Q: Jawapannya setuju, ok mereka ini dalam you punya fikiran. Soalan saya En Zaidi, kalau katakan En Zaidi nampak dua orang Plaintif ini bukan di KL Sentral, contohnya mereka berada di luar KL Sentral?

A: Kalau Kedah, Selangor saya tak tangkap

Q: Kedah, Selangor is too far.

[8] DW2 in his evidence clearly testifies that the basis for the arrest of plaintiffs under s. 105 was:

(i) To prevent the plaintiffs from participating in the 'illegal assembly' planned for the day after the news conference.

(ii) The plaintiffs were arrested before they could enter the Hotel Lobby and the evidence shows they were not dressed as if they were to attend the march.

(iii) DW2 had affixed in his mind that as long as the plaintiffs were in the vicinity and since their names were in the said Magistrate's Court order, he would have arrested them any way;

(iv) It was clear that because the plaintiffs were senior party committee members and since the senior leadership of PAS were at the news conference, the DW2 was under the apprehension that the plaintiffs would attend the march and follow the leaders.

[9] In my view, the ingredients of s. 105 have not been met. There was no evidence of a design by the plaintiffs to commit an offence and at the time of arrest it can hardly be said that the two plaintiffs' arrest would have prevented the march from taking

place. The march did take place without the plaintiffs. The plaintiffs maintain their stand that they were intending to attend the news conference only. Even if that was not the case to my mind, it was premature for the plaintiffs to be arrested outside KL Central. The plaintiffs intention to attend the press conference in the KL Hilton Lobby could not constitute a basis for arrest under s. 105 of the Criminal Procedure Code. The knowledge the section speaks of is that of the arresting officer DW2 which to my mind in this case was mere apprehension on his part.

[10] I find therefore there is no evidence to support an arrest under s. 105 CPC of the plaintiffs. I refer to the decision of the Delhi High Court reported in Criminal Law Journal *Jagdish Chander Bhatia v. State 27th May 1983* and to the *dictum* of His Lordship NN Goswamy J on s. 151 of Indian CPC which is *pari materia* with our s. 105 of the CPC and I quote:

> What is required under section 151 of the Code is that the officer concerned must know that the person to be arrested is designing to commit a cognizable offence. *An apprehension that he may commit an offence is not sufficient under that provision. Apprehension is not the same thing as knowledge. The former is a mere feeling. Latter is a definite conclusion.* Further, even mere knowledge that the person concerned would endanger peace or tranquility need not resort to any cognizable offence. Again the possibility of the commission of a cognizable offence does not mean that he is designing to commit such an offence. Lastly, it is not said that it appeared to the officer concerned that the commission of the offence could not be otherwise prevented. From the facts proved, it is clear that there was enough time to seek orders from the magistrate. From each and every angle it is seen, it is clear that the arrest of the petitioner was not in accordance with law.

[11] I refer to the submissions of counsel for the defendant and their reference to the case *Prahad Panda v. Province of Orissa* AIR [37] [1950] Orissa p. 107 and I quote:

> A mere general information about the programme or tendency of the Communist Party to commit offences even if they are cognizable it is not enough to justify the invoking of the powers under S. 151. What is required is 'knowledge' *of a design ie, of a plan for the commission of a particular offence and the particular person sought to be arrested must have been a party to that design ie, must have been associated with it in some way, however slight.*

[12] The fact that PAS supported the march did not *ipso facto* mean that the plaintiffs would have had a design to participate in the march. Whilst, the evidence shows PAS supported the aims of Bersih and that the President of PAS was present at the news conference together with the top leader of the opposition ie, Pakatan Rakyat and NGO's, this does not mean that the plaintiffs must have been a party to the design or associated with it to move out of KL Hilton into areas prohibited by the Magistrate Court order in violation of the same or take part in a rally without a Police Permit, all the plaintiffs were doing at the time of the arrest was proceeding to attend a news conference, which was not unlawful. If the plaintiff were part of a design they would have been present with the leadership at the Press Conference rather than be singled out as they have.

[13] I therefore rule that the detention of the plaintiffs under s. 105 of the CPC is unlawful and the defendants detention of the plaintiffs is an act of false imprisonment.

Damages

[14] In assessment of damages the court must take into consideration the conduct of the defendants in violating the constitutional rights of the plaintiffs ie, art. 5(1) of the Constitution. The Federal Constitution is a tapestry of shades of rights and liberties of a citizen and provides checks and balances against over zealousness and single-minded oppressiveness. The court over the years have become and taken upon itself to be sentinels to preserve not only rights and the liberties of citizens but the *sanctum* of the constitution as the supreme law of the land. I am guided by the salutary *dictum* of Gopal Sri Ram JCA as he then was sitting in the Federal Court in the case of *Palm Oil Research And Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265 particularly at pp. 286-288 of his judgment and I quote:

> [42] The relevant source of public law in our jurisdiction is the Federal Constitution, for it declares by its own terms in art 4(1) that it is the supreme law. It follows that what English lawyers refer to as 'administrative law' or 'public law' has no separate existence dehors the Constitution in our jurisdiction. All principles of administrative law or public law must find their place within the Constitution. These principles are to be derived through an

interpretation of those provisions falling within Part II of the Constitution which guarantee to our citizens all those fundamental rights that are inherent in all human beings. It is the solemn duty of the judicial arm of Government – *the courts who are the guardians of constitutional rights – to interpret the fundamental rights provisions in Part II of the Constitution prismatically, so that our citizens obtain the full benefit and value of those rights. And it is in this simple way, through the exercise of the court's interpretive jurisdiction that our public law gains momentum*. Accordingly, it cannot be over-emphasised that on no account should our courts adopt a narrow and pedantic approach to constitutional interpretation.

[43] In truth, no authority is required for these axiomatic propositions. But should it be required then it may be found in at least three cases. The first of these is *Ong Ah Chuan v. Public Prosecutor* [1981] 1 MLJ 64 where in an oft quoted passage Lord Diplock said:

> In a constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, references to 'law' in such context as 'in accordance with law', 'equality before the law', 'protection of the law' and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation in Singapore at the commencement of the Constitution. It would have been taken for granted by makers of the Constitution that the 'law' to which citizens could have recourse for the protection of fundamental liberties assured to them by the Constitution would be a system of law that did not flout those fundamental rules. If it were otherwise it would be misuse of language to speak of law as something which affords 'protection' for the individual in the enjoyment of his fundamental liberties, and the purported entrenchment (by art 5) of arts 9(1) and 12(1) would be little better than a mockery.

[44] Although Ong Ah Chuan concerns the interpretation of the fundamental rights provisions in the Singapore, the observations of Lord Diplock there applies with equal force to our Constitution: see *S Kulasingam & Anor v. Commissioner of Lands, Federal Territory & Ors* [1982] 1 MLJ 204.

[45] The second authority is *Dato Menteri Othman bin Baginda & Anor v. Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29, where Raja Azlan Shah Ag LP said:

> In interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way – 'with less rigidity and more generosity than other Acts' (see *Minister of Home Affairs v. Fisher* [1979] 3 All ER 21). A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: 'A constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms.' The principle of interpreting constitutions 'with less rigidity and more generosity' was again applied by the Privy Council in *Attorney General of St Christopher, Nevis and Anguilla v. Reynolds* [1979] 3 All ER 129 at 136.
>
> It is in the light of this kind of ambulatory approach that we must construe our Constitution.

[46] It is imperative that every word in the above quoted passage should be carved indelibly in our minds if we are to meaningfully perform our duty as interpreters of the supreme law.

[47] The third authority is *Reyes v. The Queen* [2002] 2 AC 235 where Lord Bingham said:

> *As in the case of any other instrument, the court must begin its task of constitutional interpretation by carefully considering the language used in the Constitution. But it does not treat the language of the Constitution as if it were found in a will or a deed or a charterparty*. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. *The court has no licence to read its own predilections and moral values into the Constitution, but it is required to consider* the substance of the fundamental right at

> issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society: see *Trop v. Dulles* [1958] 356 US 86. (emphasis added.)

[15] The principle of assessment of damages are set out in *McGregor on Damages* at para. 1850 and I quote:

> The details of how the damages are worked out in false imprisonment are few: generally it is not a pecuniary loss but a loss of dignity and the like, and is left much to the jury's or judge's discretion. The principal heads of damage would appear to be the injury to liberty, ie, the loss of time considered primarily from a non-pecuniary viewpoint, and the injury to feelings, ie, the indignity, mental suffering, disgrace and humiliation, with.
>
> In addition there may be recovery for any resultant physical injury, illness or discomfort, as where the imprisonment has a deleterious effect on the Plaintiff's health. This is illustrated by the two old cases, *Lowden v. Goodrick* and *Pettit v. Addington*, where the only reason that the Plaintiff failed to recover for a decline in his health from the imprisonment was that he failed to plead it as special damage. Also damages may be given for any injury to reputation, for, as Lawrence LJ said in *Walter v. Alltools*, a false imprisonment does not merely affect a man's liberty; it also affects his reputation.

[16] In assessing damages, I took onto consideration the following:

(i) Deprivation of the plaintiffs' liberty by their wrongful arrest in breach of art. 5(1) of the Federal Constitution;

(ii) The plaintiffs were afforded access to communication with their solicitors;

(iii) No evidence of physical injury and mental suffering as the plaintiffs were released on the same day at 9.20pm;

(iv) There would be an element of disgrace and humiliation attributed to the plaintiffs by virtue of the wrongful arrest.

[17] I am guided by the *dictum* of Whyatt CJ in the case of *Tan Kay Teck & Anor v. The Attorney-General* [1957] 1 LNS 84; [1957] 23 MLJ p. 237 and I quote at p. 240 of the report.

It remains to consider the question of damages. It was pointed out by Scott LJ in *Dumbell v. Roberts* [1944] 1 All ER 329 that where a person has been wrongfully arrested and detained, it is in the public interest that sufficient damages should be awarded in order to give reality to the protection afforded by the law to personal freedom. Furthermore as Lawrence LJ observed in *Walter v. Alltools* Ltd 61 TLR 39, a false imprisonment does not merely affect a man's liberty; it also affect his reputation.

[18] I prefer to adopt the approach of awarding a lump sum as compensatory damages and taking into account all the circumstances of the case I award compensatory damages to each of the plaintiffs in the sum of RM70,000 and RM15,000 costs each.